

Response to BaFin Guidance On Outsourcing To Cloud Service Providers

VMware Cloud on AWS

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Executive Summary

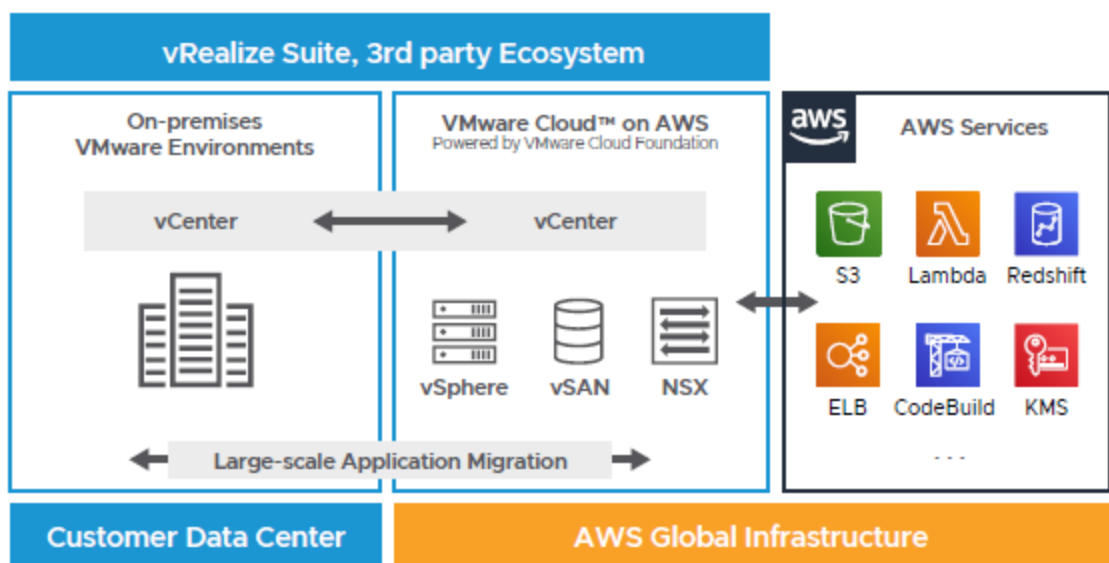
The German federal financial supervisory authority - Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) released guidance in November 2018 for regulated financial entities on outsourcing to cloud service providers, see [BaFin - Guidance on outsourcing to cloud service providers](#)

While the BaFin guidance requires regulated entities to establish an IT strategy for cloud outsourcing and conducting detailed risk analysis of the outsourcing arrangement, one of the key aspects of the guidance is the inclusion of the prescribed terms and conditions in the contracts with material outsourcing arrangements. In this whitepaper, we intend to focus on Section V of the guidance document – ‘Contractual terms in the case of (material) outsourcing.

VMware has supported a wide range of financial services organizations across the globe to rapidly drive scalability and growth through future ready technology solutions, please visit [VMware Solutions for Financial Industry](#). As part of our service, VMware Cloud on AWS provides various contractual documentation such as the [Terms of Service](#), [Service Description](#), [Service Level Agreement](#), [Data Processing Addendum](#) and the European Banking Authority (EBA) financial services addendum. The contractual documentation shows our commitment towards facilitating better service oversight, audit provisions, service delivery and data security. In the sections below we show how BaFin cloud outsourcing requirements are addressed through the above contractual documentations. Customers requiring a copy of the EBA addendum can reach out to their account representatives.

VMware Cloud on AWS

VMware Cloud on AWS brings VMware’s enterprise class Software-Defined Data Center software to the Amazon Web Services (AWS) Cloud, and enables customers to run production applications across VMware vSphere-based environments, with optimized access to AWS services. Jointly engineered by VMware and AWS, this cloud service enables IT teams to seamlessly extend, migrate, and manage their cloud-based resources with familiar VMware tools without the hassles of learning new skills or utilizing new tools. VMware Cloud on AWS integrates VMware’s flagship compute, storage, and network virtualization products (VMware vSphere, VMware vSAN, and VMware NSX) along with VMware vCenter management, and optimizes it to run on dedicated, elastic, Amazon EC2 bare-metal infrastructure that is fully integrated as part of the AWS Cloud. This service is managed by VMware and sold by VMware and resold its partner community. With the same architecture and operational experience on-premises and in the cloud, IT teams can now quickly derive instant business value from use of the AWS and VMware hybrid cloud experience.



VMware response to Section V - Contractual terms in the case of (material) outsourcing

	BaFin Outsourcing Guideline	VMware Response	Contract Reference
	1. Scope of Performance		
1	The agreement should include a specification, and if necessary a description, of the service to be performed by the cloud service provider. This should be stipulated in what is referred to as the service level agreement. In this context, the following aspects should be defined:	As part of our service offering, VMware Cloud on AWS provides various contractual documentation such as the Terms of Service , Service Description , Service Level Agreement , Data Processing Addendum and the European Banking Authority (EBA) financial services addendum (please reach out to your account representative for a copy of the EBA financial services addendum).	N/A
2	<ul style="list-style-type: none"> the item to be outsourced and its implementation (e.g. type of service and deployment model, scope of services offered such as computing power or available memory space, availability requirements, response times). 	VMware Cloud on AWS Service Description describes the VMware Cloud on AWS-related services provided by VMware. This is available publicly at VMware Cloud on AWS - Service Description .	VMware Cloud on AWS - Service Description
3	<ul style="list-style-type: none"> support services. 	The support services are documented within the 'Support' section of the VMware Cloud on AWS - Service Description .	Support section within the VMware Cloud on AWS - Service Description
4	<ul style="list-style-type: none"> responsibilities, duties of cooperation and provision (e.g. in the case of updates). 	VMware Cloud on AWS implements a shared responsibility model that defines distinct roles and responsibilities of customer and VMware. This is included within the VMware Cloud on AWS - Service Description within the 'Security' section.	Security section within the VMware Cloud on AWS - Service Description
5	<ul style="list-style-type: none"> place of performance (e.g. location of data centres). 	<p>VMware Cloud on AWS is available in multiple regions across Europe including Frankfurt. Customers select the AWS region where the SDDC will be deployed.</p> <p>As part of the service VMware collects service operations data and the Usage Data (as defined in the VMware Cloud on AWS - Service Description), including customer SDDC configuration information. This is stored in the AWS US-West (Oregon) data center location but may be replicated to other AWS regions to ensure availability of the VMware Cloud on AWS service.</p>	Service Location section within the VMware Cloud on AWS - Service Description

	BaFin Outsourcing Guideline	VMware Response	Contract Reference
		Refer to the 'Service Location' section within the VMware Cloud on AWS - Service Description .	
6	<ul style="list-style-type: none"> commencement and end of outsourcing agreement. 	<p>VMware Cloud on AWS is available to customers once the customer signs up to the service and agrees to the applicable terms and conditions.</p> <p>Customers can terminate the service at the end of the subscription term or during the subscription term (customers will be liable for the fees for the applicable term) in line with the Termination clauses within the VMware Terms of Service.</p>	Termination section within the VMware Terms of Service
7	<ul style="list-style-type: none"> key ratios for performing ongoing review of service level. 	VMware's Service Level Agreement (SLA) provides the service level metrics for VMware Cloud on AWS. Please see VMware Cloud on AWS - Service Level Agreement . Please also see vmware-services.io for our service status and incidents data.	VMware Cloud on AWS - Service Level Agreement
8	<ul style="list-style-type: none"> indicators for identifying an unacceptable service level. 	See response at row 7	See response at row 7
2. Information and audit rights of supervised company			
9	<p>Information and audit rights as well as control possibilities of the supervised company must not be subject to contractual restrictions. It has to be ensured that the supervised company receives the information it needs to adequately control and monitor the risks associated with the outsourcing.</p> <p>To safeguard the information and audit rights, the following terms in particular should be contractually agreed:</p>	VMware acknowledges that maintaining oversight and governance over the material outsourced arrangement is critical for the regulated entities and regulators to meet their supervision requirements. VMware has developed a financial services addendum which describes the audit rights provisions for our customers and regulators. Please reach out to your account representative for a copy of the European Banking Authority (EBA) financial services addendum.	Section 4.1 in the financial services addendum
10	<ul style="list-style-type: none"> grant of full access to information and data as well as access to the cloud service provider's business premises, including all data centres, equipment, systems, networks used for providing the items outsourced; this includes the related processes and controls. 	<p>VMware grants audit rights to the regulated entities, regulators and regulated entity's auditors. See the financial services addendum - section 4.1 within Right of Access and Audit.</p> <p>VMware Cloud on AWS uses Amazon Web Services (AWS) data centers. Where audits of AWS's environments are needed, customers should rely on separate agreement with AWS in relation to audit rights. See section 4.1.c within Right of Access and Audit.</p>	section 4.1 and 4.1.c within Right of Access and Audit in the financial services addendum
11	<ul style="list-style-type: none"> the possibility of performing on-site audits of the cloud service provider (and where applicable of the chain-outsourcing company). 	VMware provides a range of audit reports and compliance certifications to meet the audit requirements. Where an onsite is determined necessary, VMware has made provisions for	section 4.1 within Right of Access and Audit in the

	BaFin Outsourcing Guideline	VMware Response	Contract Reference
		regulators to conduct onsite audits. See section 4.1 within Right of Access and Audit. As indicated above, where audit of AWS's environment is required, customers should rely on separate agreement with AWS in relation to audit rights.	financial services addendum
12	<ul style="list-style-type: none"> effective possibilities of controlling and auditing the entire outsourcing chain. 	See response at row 11.	See response at row 11.
	No (indirect) restriction of rights		
12	Effective exercise of the information and audit rights may not be restricted by contract. The German supervisory authorities consider such impermissible restriction of information and auditing rights to exist particularly in the case of contractual agreements granting such rights only subject to certain conditions. This particularly includes:	VMware recognizes the importance of providing necessary information to customers to satisfy their supervision requirements.	N/A
13	<ul style="list-style-type: none"> agreeing on incremental information and audit procedures, e.g. the obligation to first rely on the audit reports, certificates or other proof of compliance with recognised standards by the cloud service provider before the supervised company can perform its own auditing activities. 	VMware provides a range of audit reports and certifications that demonstrate our compliance against leading industry standards. To the extent the scope of reports does not cover customer requirements, VMware can facilitate onsite audit requirements. See section 4.1 within Right of Access and Audit.	Section 4.1. within Right of Access and Audit in the financial services addendum
14	<ul style="list-style-type: none"> restricting performance of information and audit rights to submission of audit reports, certificates or other proof of compliance with recognised standards by the cloud service provider. 	See response at row 13	See response at row 13
15	<ul style="list-style-type: none"> linking information access to prior attendance of special training programmes. 	VMware does not obligate customers or regulators or their auditors to attend special training programs prior to conducting onsite audits.	N/A
16	<ul style="list-style-type: none"> wording a clause in such a way that performance of an audit is made conditional on its commercial reasonableness. 	As indicated in section 4.1 and 4.2 of the financial services addendum VMware has made provisions for regulators, the regulated entity and the regulated entity's auditors to conduct audits. See section 4.1 within Right of Access and Audit. Where possible, the requestors should try to use the less burdensome and less expensive ways to conduct the audits.	Section 4.1 and 4.2 within Right of Access and Audit in the financial services addendum
17	<ul style="list-style-type: none"> limiting the performance of audits in terms of timing and personnel; as a general rule, however, it is acceptable to limit access to 	VMware has not limited the performance of the audit in terms of timing and personnel. We expect that audits be conducted in a risk-based and proportional manner, taking into account the legal	Section 4.1. in the financial services addendum

	BaFin Outsourcing Guideline	VMware Response	Contract Reference
	customary business hours upon advance notice.	requirements, the context, and the nature of the Service Offering.	
18	<ul style="list-style-type: none"> making reference to exclusive use e.g., of management consoles for exercising information and audit rights of the company. 	VMware does not obligate customers to use exclusive management consoles for audit rights. VMware does provide customers the option to monitor service availability information through the VMware Cloud Services Operational Status located at https://status.vmware-services.io	Section 6. Performance monitoring in the financial services addendum
19	<ul style="list-style-type: none"> specifying the procedure as well as the scope by which information and audit rights are exercised by the cloud service provider. 	<p>VMware has not restricted the scope of audit in the contract. Where onsite audit is required customers can provide the scope of service which requires audit and agree the scope as part of the statement of work.</p> <p>Where expansion of scope is needed for certifications and reports, customer may by written notice to VMware, submit a request for expansion of scope of VMware's certifications and reports where the scope is not already covered by the existing certifications, reports or other documentation.</p>	Section 4.1 and 4.2 within Right of Access and Audit in the financial services addendum
Pooled audits			
20	Supervised companies subject to compliance with sections 25a, 25b KWG may avail themselves of exemptions in Circular 09/2017 (BA) – Minimum Requirements for Risk Management – (MaRisk). Pursuant to BT 2.1 Item 3 MaRisk, the internal auditing function of the supervised company in the case of material outsourcing may forego own auditing activities provided that the auditing work carried out by the external service provider meets the requirements of AT 4.4 and BT 2 MaRisk. The internal auditing function of the supervised outsourcing company must satisfy itself at regular intervals that these conditions are met. The audit findings concerning the supervised company are to be passed on to the internal auditing function of the supervised outsourcing company.	<p>VMware performs regular internal and external audits as a way to measure the effectiveness of controls. Customers can consider relying on the audits conducted by VMware.</p> <p>This does not eliminate customers' right to audit as described in the rows 9 to 19 above.</p>	N/A
21	In this regard the auditing activity may be performed by the internal audit department of the cloud service provider, the internal audit department of one or more of the supervised outsourcing companies on behalf of the supervised outsourcing companies ("pooled audits"), a third party appointed by the cloud service provider or a	VMware grants right of audit and access to the regulator, the regulated Entity, and the regulated Entity's statutory auditor. See section 4 – Right of Access and Audit in the financial services addendum. VMware also conducts third party audits inline with leading international standards such as ISO 27001, ISO 27017, ISO 27018 and SOC 2. You can see our existing certifications at	Section 4 – Right of Access and Audit in the financial services addendum.

	BaFin Outsourcing Guideline	VMware Response	Contract Reference
	third party appointed by the supervised outsourcing companies.	https://cloud.vmware.com/trust-center/compliance	
22	For the other supervised companies, it may be permissible in the individual case to exercise certain information and audit rights against the cloud service provider jointly with other supervised companies by way of pooled audit.	Where VMware has implemented pooled audits, customers can be part of these pooled audits in co-operation with other VMware customers. See section 4.2.e in the financial services addendum.	Section 4.2.e in the financial services addendum.
23	If a supervised company avails itself of one of the aforementioned exemptions, this may not result in its information and audit rights being restricted.	VMware has not restricted the audit rights for customers or regulators. See rows 19 to 22.	
Proof/certificates and audit reports			
24	The supervised company as a general rule may use documentation/certificates on the basis of common standards (e.g. international security standard ISO/IEC 2700X of the International Organization for Standardization, Cloud Computing Compliance Controls Catalogue (C 5 Catalogue) of the BSI), audit reports of recognised third parties or internal audit reports of the cloud service provider. The supervised company in this regard must take account of the scope, depth of detail, up-to-dateness and suitability of the certifier or auditor of such documentation/certificates and audit reports.	<p>VMware has a compliance program in place that is designed after several industry standards and frameworks including ISO 27001, ISO 27017, ISO 27018 and SOC 2. The purpose of these reports is to help customers and their auditors understand the controls and evidence gathered by 3rd party assessors evaluating support operations, security, and compliance programs.</p> <p>The compliance program utilizes internal/external audits as a way to measure the effectiveness of the controls and/or effectiveness of the process applied to reduce risks associated with safeguarding information and also to identify areas of improvement.</p> <p>See section 2. Information Security Program in the financial services addendum</p>	Section 2. Information Security Program in the financial services addendum
25	However, a supervised company must not rely solely on these when exercising its audit activity. Where the internal audit department uses such documentation/certificates in its activity, it should be able to examine the evidence underlying them.	As part of the right of access and audit, VMware provides access to the relevant business premises, devices, systems, networks, and data used in provision of services. See section 4 – Right of Access and Audit in the financial services addendum.	Section 4 – Right of Access and Audit in the financial services addendum
3. Information and audit rights of supervisory authorities			
26	Information and audit rights as well as control possibilities of the supervisory authorities must not be subject to contractual restrictions. The supervisory authorities must be able to monitor cloud service providers exactly as the applicable law provides for the supervised company. It must be possible for the supervisory authorities to exercise	VMware acknowledges that maintaining oversight and governance over outsourced services is critical for the supervisory authorities. As indicated in row 25 above, VMware provides access to relevant business premises, devices, systems, networks, and data used in provision of services. See section 4.1 –	Section 4.1 – Right of Access and Audit in the financial services addendum

	BaFin Outsourcing Guideline	VMware Response	Contract Reference
	<p>their information and audit rights as well as control possibilities properly, and without restriction, as regards the item being outsourced; this also applies to those persons whom the supervisory authorities use when performing the audits.</p> <p>To safeguard these rights, the following terms in particular should be contractually agreed:</p>	Right of Access and Audit in the financial services addendum.	
27	<ul style="list-style-type: none"> obligation of the cloud service provider to cooperate with the supervisory authorities without restriction. 	VMware acknowledges the importance of cooperating with supervisory authorities to provide necessary information to meet the information and audit rights of supervisory authorities. See section 4.2 in the financial services addendum	Section 4.2 in the financial services addendum
28	<ul style="list-style-type: none"> grant of full access to information and data as well as access to the cloud service provider's business premises, including all data centres, equipment, systems, networks used for providing the items outsourced; this includes the processes and controls relating thereto as well as the possibility of performing on-site audits of the cloud service provider (and where applicable of the chain-outsourcing company). 	<p>VMware grants audit rights to the regulated entities, regulators, and regulated entity's auditors. See the financial services addendum - section 4.1 within Right of Access and Audit.</p> <p>VMware Cloud on AWS uses Amazon Web Services (AWS) data centers. Where audits of AWS's environments are needed, customers should rely on separate agreement with AWS in relation to audit rights. See section 4.1.c within Right of Access and Audit.</p>	section 4.1 and 4.1.c within Right of Access and Audit in the financial services addendum
29	<ul style="list-style-type: none"> effective possibilities of controlling and auditing the entire outsourcing chain. 	See response at row 28 above.	See response at row 28 above
No (indirect) restriction of rights			
30	Such impermissible restriction of information and auditing rights as well as control possibilities of the German supervisory authorities is deemed to exist particularly in the case of provisions granting such rights only on certain conditions. We refer to the above statements on the restriction of the rights of the supervised companies to avoid repetition.	VMware's contractual clauses do not indirectly intend to restrict the audit rights of the supervisory authorities or the regulated entities.	N/A
4. Rights to issue instructions			
31	Rights of the supervised companies to issue instructions are to be agreed. The rights to issue instructions are to ensure that all required instructions needed to perform the agreed service can be issued, i.e. the possibility of influencing and controlling the outsourced item is required. The technical implementation may be organised individually based on the company's specific circumstances.	VMware's Service Description and Terms of Service describe the services included with the VMware Cloud on AWS subscription. Customers who require additional services can discuss the requirements with VMware.	N/A

	BaFin Outsourcing Guideline	VMware Response	Contract Reference
32	If the supervised company uses proof/certifications or audit reports (cf. V.2), it should also have the possibility of influencing the scope of proof/certifications or audit reports so that it can be expanded to include relevant systems and controls. There should be a reasonable proportion in how many and how often such instructions are issued.	VMware has made provisions for customers to request expansion of scope of VMware's certifications and reports where the scope is not already covered by the existing certifications or reports. See section 3 - Submission of requests for expansion of scope of the Certifications or Reports.	Section 3 in financial services addendum - Submission of requests for expansion of scope of the Certifications or Reports
33	Moreover, the supervised company should be authorised at all times to issue instructions to the cloud service provider for correction, deletion and blocking of data and the cloud service provider should be allowed to collect, process and use the data only in the context of the instructions issued by the supervised company. This should also cover the possibility of issuing an instruction at any time to have the data processed by the cloud service provider transferred back to the supervised company promptly and without restriction.	<p>VMware processes data in line with the Service Description and Data Processing Addendum. Since VMware Cloud on AWS is an IaaS service, Customers are fully responsible for the content they upload on our platform, including backup and deletion. VMware may collect service data such as configuration, performance, and usage data, to improve VMware products and services. See the 'Usage Data' section in the VMware Cloud on AWS - Service Description.</p> <p>Personal data is processed in line with the Data Processing Addendum. See Data Processing Addendum.</p>	VMware Cloud on AWS - Service Description Data Processing Addendum
34	If the explicit agreement on the rights of the supervised company to issue instructions can be waived, the service to be provided by the outsourcing company is to be specified with sufficient clarity in the outsourcing agreement.	See response at row 31.	See response at row 31
5. Data security/protection (reference to location of data storage)			
35	Provisions ensuring compliance with data protection regulations and other security requirements are to be agreed.	<p>VMware processes data in line with the data processing addendum. Provisions for compliance with data protection regulations and security requirements are documented in the VMware data processing addendum. See Data Processing Addendum.</p> <p>Data protection and security requirements are also documented within the VMware Terms of Service. See section 2. Data Protection and Security in VMware Terms of Service.</p>	Data Processing Addendum
36	The location of data storage must be known to the supervised company. This should include the specific	VMware Cloud on AWS is available in multiple regions across Europe including Frankfurt.	Service Location section

	BaFin Outsourcing Guideline	VMware Response	Contract Reference
	location of the data centres. As a general rule, giving the name of the location (e.g. the town or city) will suffice for this purpose. However, if the supervised company should need the precise address of the data centre based on considerations of risk management, the cloud service provider should provide it.	<p>Customers select the AWS region where the SDDC will be deployed. Customers are also responsible for backing up the content and choosing the backup location.</p> <p>As part of the service VMware collects service operations data and the Usage Data, including customer SDDC configuration information. This is stored in the AWS US-West (Oregon) data center location but may be replicated to other AWS regions to ensure availability of the VMware Cloud on AWS service. Refer to the ‘Service Location’ section within the VMware Cloud on AWS - Service Description.</p> <p>For further details on AWS data centers please see Data Centers - Our Controls (amazon.com) and Amazon Cloud Security Alliance .</p>	within the VMware Cloud on AWS - Service Description
37	Moreover, redundancy of the data and systems should be ensured so that in the event of a failure of one data centre it is ensured that the services are maintained.	VMware Cloud on AWS have multiple disaster recovery mechanisms in place to recover from multiple concurrent failures. VMware Cloud on AWS maintains availability as per the service level agreement. See VMware Cloud on AWS - Service Level Agreement .	Availability section within see VMware Cloud on AWS - Service Level Agreement
38	The security of the data and systems is also to be ensured within the outsourcing chain.	<p>VMware maintains appropriate agreements with the sub-contractors to ensure data protection and data security. See section 7 – Chain Outsourcing within the financial services addendum.</p> <p>Please also see section 3 – Subprocessing and 4 – Security Measures within the Data Processing Addendum for further measures for managing chain outsourcers.</p>	<p>Section 7 – Chain Outsourcing in the financial services addendum</p> <p>Section 3 – Subprocessing and 4 – Security Measures within the Data Processing Addendum</p>
39	The supervised company must have the possibility of quickly accessing at all times its data stored with the cloud service provider and of re-transferring the same if required. In this regard it has to be ensured that the selected form of re-transfer does not restrict or exclude the use of the data. For that reason, platform-independent standard data formats should	VMware Cloud on AWS provides bi-directional workload migration capability that allows customers to quickly access and re-transfer the workloads back to on premises environment. VMware supports customers in transfer of customer activities post-termination, as set out in the section 8 - Post-Termination Support and	Section 8 - Post-Termination Support and Retrieval of Customer Content in the financial

	BaFin Outsourcing Guideline	VMware Response	Contract Reference
	be agreed. Compatibility of the different system must be taken into account.	Retrieval of Customer Content in the financial services addendum.	services addendum.
	6. Termination provisions		
40	Termination rights and adequate termination notice periods are to be agreed. In particular, a special termination right, providing for termination for good cause if the supervisory authority calls for the agreement to be ended, should be agreed.	Termination rights and notice period are agreed in the terms of service and the financial services addendum. See section 7 – Termination in the VMware Terms of Service .	See section 7 – Termination in the VMware Terms of Service .
41	It has to be ensured that in the event of termination the items outsourced to the cloud service provider continue to be provided until such time that the outsourced item has been completely transferred to another cloud service provider or to the supervised company. In this regard it has to be guaranteed in particular that the cloud service provider will reasonably assist the supervised company in transferring the outsourced items to another cloud service provider or directly to the supervised company.	VMware Cloud on AWS provides bi-directional workload migration capability that allows customers to quickly access and re-transfer the workloads back to on premises environment. VMware supports customers in transfer of customer activities post-termination, as set out in the section 8 - Post-Termination Support and Retrieval of Customer Content in the financial services addendum.	Section 8 - Post-Termination Support and Retrieval of Customer Content in the financial services addendum.
42	The type, form and quality of transfer of the outsourced item and the data should be defined. If data formats are adapted to the individual needs of the supervised company, the cloud service provider should deliver a documentation of such adaptations on termination.	Customers are responsible for the content they upload on the VMware Cloud on AWS platform including virtual machines, content libraries and data stores. As part of the service VMware collects service operations data and the Usage Data, including customer SDDC configuration information. Refer to the 'Usage Data' section within the VMware Cloud on AWS - Service Description .	Usage Data section within VMware Cloud on AWS - Service Description
43	It should be agreed that after re-transfer of the data to the supervised company its data have been completely and irrevocably deleted on the side of the cloud service provider.	Termination of service offering will lead to discontinuation of service and deletion of environments and configurations as agreed in the VMware Service Description. See the 'Termination' section within the VMware Cloud on AWS - Service Description . VMware does not back-up or archive Customer Content. When a host is deleted from the customer SDDC, VMC cannot recover customer data and the process is irreversible. Automated processes handle media sanitization before repurposing of any hardware. Any deletion of a host on VMC results in an automated cryptographic wipe of the hard drive is performed via destruction of keys used by the self-encrypting drives.	'Termination' section within the VMware Cloud on AWS - Service Description

	BaFin Outsourcing Guideline	VMware Response	Contract Reference
44	To ensure that the outsourced areas are maintained in the event of the planned or unplanned termination of the agreement, the supervised company must have an exit strategy and review its feasibility.	Customers are responsible for developing an exit strategy and evaluating its feasibility in relation to VMware Cloud on AWS service.	N/A
	7. Chain outsourcing		
45	Provisions on the possibility and the modalities of chain-outsourcing ensuring that the requirements of supervisory law continue to be met are to be agreed. Restrictions resulting, e.g., in only the most substantially similar obligations being assumed are not permissible. It must be ensured in particular that the information and audit rights as well as controlling possibilities of the supervised outsourcing company as well as of the supervisory authorities also apply to subcontractors in the case of chain-outsourcing.	<p>VMware has published the list of current sub-contractors for VMware Cloud on AWS online, see VMware Cloud on AWS - Sub-processors.</p> <p>Customers who would like to receive updates to the sub-processor list should sign up on http://pages.cloud.vmware.com/subprocessor-communications and enable notifications for this sub-processor list</p> <p>VMware will notify the customers prior to appointing a sub-contractor and will maintain appropriate agreements with sub-contractors for delivery of relevant services. VMware will also perform service reviews of the sub-contractors including any relevant due diligence.</p> <p>VMware Cloud on AWS uses Amazon Web Services (AWS) data centers. Where audits of AWS's environments are needed, customers should rely on separate agreement with AWS in relation to audit rights. See section 4.1.c within Right of Access and Audit.</p>	<p>VMware Cloud on AWS - Sub-processors.</p> <p>Section 4.1.c within financial services addendum - Right of Access and Audit.</p>
46	With a view to chain-outsourcing, reservations of consent of the outsourcing company or specific conditions to be met in order for chain-outsourcing to be possible should be provided for in the outsourcing agreement. It should be defined which outsourced items and/or portions thereof may be chain-outsourced and which ones may not.	<p>VMware has published the list of current sub-contractors for VMware Cloud on AWS online, see VMware Cloud on AWS - Sub-processors.</p> <p>Customers who would like to receive updates to the sub-processor list should sign up on http://pages.cloud.vmware.com/subprocessor-communications and enable notifications for this sub-processor list.</p> <p>Where customers have reservations or requests over a sub-contractor, VMware can discuss this with the customers individually, however, due to the multi-tenant nature of service VMware cannot guarantee that these can be fully met.</p> <p>VMware will maintain appropriate agreements with the sub-contractors to ensure data confidentiality,</p>	Section 7- Chain Outsourcing in the financial services addendum

	BaFin Outsourcing Guideline	VMware Response	Contract Reference
		security and will monitor the service performance of the sub-contractors.	
47	The supervised company should be informed in advance of chain-outsourcing of the outsourced items and/or portions thereof in text form. The subcontractors and the items and/or portions thereof chain-outsourced to them should be known to the supervised company.	See response above at row 46.	See response above at row 46
48	In the event of a new chain-outsourcing, it has to be kept in mind that this may have impacts on the risk situation of the outsourcing and thus on the outsourcing company. Accordingly, the risk analysis should at least be reviewed or repeated in the event of a new chain- outsourcing. This also applies where material defects as well as material changes in the cloud service provided by subcontractors become known.	Customers are responsible for conducting risk assessment over the service provider in the event of new sub-contractor being appointed by the service provider or material change in the delivery of services. Any changes to sub-processors are notified in line with section 3.4 - Data Processing Addendum .	Section 3.4 - Data Processing Addendum
49	The company should review and monitor the performance of the entire service on an ongoing basis, regardless of whether the cloud service is provided by the cloud service provider or its subcontractors.	VMware's Service Level Agreement (SLA) provides the service level metrics for VMware Cloud on AWS. Please see VMware Cloud on AWS - Service Level Agreement . Customers can monitor the service performance via the dashboards in the VMware Cloud on AWS console as well as the service availability information through the VMware Cloud Services Operational Status located at https://status.vmware-services.io	VMware Cloud on AWS - Service Level Agreement . http://status.vmware-services.io
8. Information duties			
50	Provisions are to be agreed ensuring that the cloud service provider informs the supervised company about developments that might adversely affect the orderly performance of the outsourced items. That includes things like reporting any disruptions in providing the cloud service. This is to ensure that the company can adequately monitor the outsourced item.	VMware may make changes to the service to improve the health and availability of the service. Where VMware makes any material change to the service, VMware will notify customers prior to implementing the change in line with 'Modifications' terms and conditions in the VMware Terms of Service. See section 1.8 VMware Terms of Service .	Section 1.8 VMware Terms of Service
51	The cloud provider is to inform the supervised company without delay about any circumstances that might pose a risk to the security of the supervised company's data to be processed by the cloud service provider, e.g. as a result of acts by third parties (e.g. attachment or confiscation), insolvency or composition proceedings, or other events.	VMware provides incident and problem management services pertaining to the availability of the service offering. Customers are responsible for incident and problem management for virtual machines deployed on the SDDC. See Incidents and Problem Management section within VMware Cloud on AWS - Service Description .	Incidents and Problem Management section within VMware Cloud on AWS - Service Description

	BaFin Outsourcing Guideline	VMware Response	Contract Reference
		VMware facilitates the determination of the impact of any disruption to the organization through defined documents that identify dependencies, critical products, and services. The real-time status of the VMware Cloud on AWS along with past incidents is publicly available at https://status.vmware-services.io	
52	It should be ensured that the supervised company is adequately informed by the cloud service provider in advance in the event of relevant changes in the cloud service to be provided by the cloud service provider. Service descriptions and any changes to them should be provided and/or notified to the supervised company in text form. It should be ensured that the supervised company is adequately informed, to the extent permitted by law, where any requests/demands for surrender of data of the supervised company are made by third parties.	<p>VMware may make changes to the service to improve the health and availability of the service. Where VMware makes any material change to the service, VMware will notify customers prior to implementing the change in line with 'Modifications' terms and conditions in the VMware Terms of Service. See section 1.8 VMware Terms of Service.</p> <p>VMware has formal processes in place to respond to legal requests to surrender data and does so in line with the 'Required Disclosures' section of the terms of service . See section 1.9 – Required Disclosures in the VMware Terms of Service</p>	Section 1.8 and 1.9 VMware Terms of Service
9. Notice of applicable law			
53	Where a choice of law clause is agreed and German law is not agreed as the governing law, the law of a country from the European Union or the European Economic Area should at any event be agreed as the law governing the agreement.	Please see section 13.10 Governing Law in the in the VMware Terms of Service .	Section 13.10 Governing Law in the in the VMware Terms of Service



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